

COPYRIGHT

BP 3310

Cabrillo College recognizes the importance of providing appropriate print, non-print and software resources in support of the instructional program. The Governing Board also recognizes that violations of Federal Copyright Law contribute to increased costs and reduce incentives for the development of good educational programs. Therefore, in an effort to discourage violation of the copyright law and to prevent such illegal activities from occurring in facilities utilizing equipment under college control, it is the policy of Cabrillo College to adhere to the print, non-print and computer software provisions of the United States Copyright Law.

District employees will be informed that they are expected to adhere to section 117 of the 1976 Copyright act as amended, governing use of copyright materials.

Supervisors are responsible for establishing practices which will enforce copyright law.

Employees found to be in willful infringement of the law may be subject to disciplinary action.

In no case shall any employee or student use Cabrillo College equipment for duplication or playback which might prevent or circumvent the sale of materials by the copyright owner.

The Vice President, Business Services, or designee is designated as the only individual who may sign license agreements for Cabrillo College purchases. All licensing agreements signed by the Vice President, Business Services, or designee shall have prior approval of the Superintendent/President or the program administrator of the program requesting the license.

In the absence of the determination and advice or in the event that permission has not been first requested by the faculty member, no defense or indemnification by the college shall be provided to a faculty or staff member who knowingly infringes the copyright law.

Legal Reference: Title 17, United States Code, [1/1/1978]; and amendments to Section 117 of Title 17 per Public Law 96-517 [12/12/1980].

Adopted: April 4, 1988

I. Printed Materials

A. Permitted - No restriction

1. Published works which were never copyrighted. Anyone may reproduce without restriction works that were never copyrighted. If there is no indication a work has been copyrighted at the front of the book, periodical, etc. (indicated by a letter “c” in a circle, the word “Copyright” or the abbreviation “copr.”) there are no restrictions as to the number of copies nor uses one may make of the work.
2. Published works whose copyrights have expired. Anyone may reproduce without constraint published works whose copyrights have expired. All copyrights dated earlier than 1908 have expired. Copyrights dated 1908 or later may have expired because the initial period of copyright protection is for 28 years. It is safest to assume that material dated 1908 or later is still protected and one is advised to seek permission from the publisher before copying these materials.
3. U.S. Government publications. U.S. Government publications may be copied freely because they are not copyrightable.

B. Permitted - With limitations

Instructors and others may reproduce copyrighted material for classroom use and for research without securing permission and without paying royalties when the circumstances amount to what the law calls “fair use,” i.e. copying items for such purposes as filling in missing information or for bringing materials up to date; but fair use is a multifaceted concept and has still not been defined by the courts. The spirit and letter of these guidelines should be observed.

1. Single Copies. For teaching, including preparation, and for scholarly research, any instructor may make, or have made, a single copy of:
 - a chapter from a book
 - an article from a journal
 - a short story, essay, or poem
 - a graph, chart, drawing, cartoon, diagram or picture in any of those works
2. Multiple Copies. For one time distribution in class to students, an instructor may make, or have made, multiple copies if he or she:
 - makes no more than one for each student; and
 - includes the notice of copyright (writes it on the first sheet or copies the page on which it appears); and
 - is selective and sparing in choosing poetry, prose, and illustrations; and
 - makes no charge to the student beyond the actual cost of the photocopying.
- 2.2 Multiple copies for one time distribution in class may be made of the following:
 - A complete poem if less than 250 words
 - an excerpt from a longer poem, but not to exceed 250 words
 - a complete article, story or essay of less than 2500 words
 - an excerpt from a larger printed work not to exceed 10 percent of the whole or 1000 words, whichever is less
 - one chart, graph, diagram, drawing, cartoon or picture per book or magazine issue.

NOTE: Spontaneity is to be considered as a factor for permission for duplication: (1) the copying is at the instance and inspiration of the individual instructor; and (2) the inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

C. Prohibited

1. Copying more than one work or two excerpts from a single author during one class term.
2. Copying more than three works from a collective work or periodical volume during one class term.
3. More than nine sets of multiple copies for distribution to students in one class term.
4. Copying used to create or replace or substitute for anthologies or collective works.
5. Copying of “consumable” works such as workbooks, standardized tests, answer sheets, etc.
6. Copying shall not:
 - (a) substitute for the purchase of books, publishers’ reprints or periodicals;
 - (b) be directed by higher authority;
 - (c) be repeated with respect to the same item by the same teacher from term to term.

NOTE: These prohibitions do not apply to current news magazines and newspapers.

7. Copying for Profit. Fair use extends only to nonprofit copying. Instructors should not charge students more than the actual cost of photocopying and should not make copies for students who are not in their own classes, without obtaining permission. Publishers have recognized that fair use extends to classroom copies made and distributed by a commercial copy center.
8. Unpublished Works. One should obtain permission from owners of unpublished works in order to copy from them. The law gives copyright protection to unpublished works from the time they are created.

D. Procedure

1. When an instructor (or person requested by an instructor) desires to copy material that is prohibited, the individual doing the copying must secure written permission from the copyright owner using the Request for Authorization to Duplicate Copyrighted Material form or a letter covering all items of the form. (See Appendix I)
2. The form and the letter from the copyright owner granting permission shall be kept on file by the originator for as long as the material is being used, plus three years. A copy of the form and the letter granting permission shall also be retained in the division office.

II. Sheet And Recorded Music

A. Permitted

1. Emergency copies for an imminent performance are permitted, provided they are replacing purchased copies and replacement is planned.
2. Multiple copies (one per pupil) of excerpts not constituting an entire performance unit or more than 10 percent of the total work may be made for academic purposes other than performances.
3. Purchased sheet music may be edited or simplified provided the character of the work isn’t distorted or lyrics added or altered.
4. A single copy of a recorded performance by students may be retained by the department and/or individual teacher for evaluation or rehearsal purposes.
5. A single copy of recordings of copyrighted music owned by the department for constructing exercises or examinations and retained for the same use.

B. Prohibited

1. Copying to replace or substitute for anthologies or collections.
2. Copying from works intended to be “consumable”.
3. Copying for purpose of performance, except for II.A.2. above.
4. Copying to substitute for purchase of music.
5. Copying without inclusion of copyright notice on the copy.

C. Procedure

1. When an instructor (or person requested by an instructor) desires to copy material that is prohibited, the individual doing the copying must secure written permission from the copyright owner using the Request for Authorization to Duplicate Copyrighted Material form or a letter covering all items of the form. (See Appendix I)
2. The form and the letter from the copyright owner granting permission shall be kept on file by the originator for as long as the material is being used, plus three years. A copy of the form and the letter granting permission shall also be retained in the division office.

III. Audiovisual Works

A. Permitted

1. Creating a slide or overhead transparency series from multiple sources as long as creation does not exceed 10 percent of the photographs in one source, unless that source (book, filmstrip, magazine) forbids photographic reproduction.
2. Creating a single overhead transparency from a single page of a “consumable” workbook.
3. Reproducing selected slides from a series if reproduction does not exceed 10 percent of total nor excerpting “the essence.”
4. Excerpting sections of a film for a local videotape (not to be shown over cable) if excerpting does not exceed 10 percent of total nor contain “the essence” of the work.
5. Stories or literary excerpts may be narrated on tape and duplicated, as long as similar material is not available for sale.
6. Video programs marked “For Home Use Only” that are purchased or rented may be used in educational “face-to-face” teaching activities provided its use is an integral part of the college’s systematic instructional plan.

B. Prohibited

1. Duplication of tapes unless reproduction rights were given at time of purchase.
2. Reproduction of musical works or conversion to another format (e.g., record to tape).
3. Reproduction of commercial “ditto masters,” individually or in sets (including multimedia kits) if available for sale separately.
4. Reproduction of any audiovisual work (film, filmstrip, videotape) in its entirety.
5. Conversion from one medium format to another (e.g., film to videotape) unless permission is secured.

C. Procedure

1. When an instructor (or person requested by an instructor) desires to copy material that is prohibited, the individual doing the copying must secure written permission from the copyright owner using the Request for Authorization to Duplicate Copyrighted Material form or a letter covering all items of the form. (See Appendix I)

2. The form and the letter from the copyright owner granting permission shall be kept on file by the originator for as long as the material is being used, plus three years. A copy of the form and the letter granting permission shall also be retained in the division office.

IV. Off-air Video Recording

A. Permitted

1. A commercial broadcast, or one by a Public Broadcast System, may be recorded off-air *simultaneously with transmission and retained by a nonprofit educational institution* for 45 calendar days after date of recording providing its use is an integral part of the college's systematic instructional plan. (See C below)
2. Off-air recordings (in IV.A.1 above) may be used once by an individual teacher for relevant educational classroom activities and once for necessary reinforcement during the first ten (10) consecutive school days after recording provided its use is an integral part of the school's systematic instruction plan.
3. After the first 10 school days, recordings may be used up to the end of the 45-day retention period for instructor evaluation purposes only (e.g., to determine if the program should be purchased by the department).
4. Such recordings may be made only at the request of and used by individual instructors. No broadcast program may be recorded more than once for the same teacher.
5. Such recordings need not be used in their entirety but may not be altered or edited. The recording, however, must include the copyright notice on the program as recorded.

B. Prohibited

1. Off-air recording in anticipation of instructor requests.
2. Using the recording for instruction after the 10-day use period.
3. Holding the recording for weeks or indefinitely because:
 - a. units requiring the program concepts aren't taught within the ten-day use period.
 - b. an interruption or technical problem delayed its use.
 - c. another instructor wishes to use it, or any other assumed "legitimate" educational reason.
4. Use of college owned equipment for making or playing back copies that are not legally acquired.
5. Copying recordings and tapes bearing a copyright symbol or containing a statement prohibiting duplication. This includes the making of an archival copy.

C. Procedure

The following procedures were developed using the *Guidelines for Off-Air Recording of Broadcast Programming for Educational Purposes*, as recommended by the House Subcommittee on Courts, Civil Liberties and Administration of Justice.

Request for videotaping must be submitted to Audio Visual Services (AV) at least one day (24 hours) in advance and in writing (use request form). AV cannot record programs in anticipation of requests. If the capacity of the system is reached, instructors may elect to record off-air programs on home VCR units, i.e. your own VCR, a friend's or associate's VCR, etc. These recordings will be treated in the same manner as those recorded by AV. The requested program will be recorded on 3/4" videocassette or 1/2" VHS as specified.

The cassette will then be cataloged and labeled (including a clearly identified 45 day erase date). Notice will be sent to the instructor at that time, and a certified letter seeking permission to retain will be sent to the license holder. Should no response or letter of denial be received in 30 days, we will assume permission to retain in our video library is granted. If permission to

retain is denied, the faculty member will be advised by AV. The instructor may then elect to acquire a limited licensure. The AV media clerk will assist in finding the best source. Once division budgetary approval is obtained the request will be processed through AV in the same manner as ordering a 16mm film. Upon receipt of approval, the cassette will be re-cataloged as a permanent part of the library. The letter of approval will be filed along with the date of airing, requesting instructor, etc.

Instructor will then be notified of the clearance. Arrangements can then be made to have working copies made on VHS tape. In general, no more than 2 copies per instructor will be made; one for classroom use, and one for assignment to the ILC. Should one of these copies become unusable, the damaged copy must be returned before a new copy will be made. The original master will remain in AV, and will not be available for check-out. (This is to insure that a high quality original will always be available.) Furthermore, instructors must supply AV with blank VHS tapes, available from Small Stores. Video programs marked "For Home Use Only" that are purchased or rented may be used in educational "face-to-face" teaching activities provided its use is an integral part of the college's systematic instructional plan.

V. Computer Software

A. Permitted

1. Making or authorizing the making of another copy of a computer program provided:
 - a. that such a new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and it is used in no other manner, or
 - b. that such new copy or adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program shall cease to be rightful.
2. Cabrillo College employees will be expected to adhere to the provisions of *Public Law 96-517, Section 7 (b)* which amends *Section 117 of Title 17 of the United States Code* to allow for the making of a back-up copy of computer programs. This states that:
 - a. " ... it is not an infringement for the owner of a computer program to make or authorize the making of another copy or adaptation of that computer program provided:
 - (1.) that such new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner.
 - (2.) that such new copy and adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful".
 - c. Software used on a disk sharing system will be made secure from copying.

B. Prohibited

1. Creation of any new copies of copyrighted programs for any purpose other than the two permitted above.
2. Creation of new copies while using a disk-sharing or network system.
3. Use of college-owned equipment for making illegal copies.

C. Procedure

1. When an instructor (or person requested by an instructor) desires to copy material that is prohibited, the individual doing the copying must secure written permission from the copyright owner using the Request for Authorization to Duplicate Copyrighted Material form or a letter covering all items on the form. (See Appendix I)
2. The form and the letter from the copyright owner granting permission shall be kept on file by the originator for as long as the material is being used, plus three years. A copy of the form and the letter granting permission shall be retained in the division office.

VI. Staff Training

- A. A reminder of the provisions of copyright law will be sent to staff members annually in the fall semester. Other programs, workshops and training will be provided as needed.
- B. The Vice President, Instruction, the College Librarian, the Bookstore Manager, and the Support Services Coordinator may be used as resource people on questions relating to copyright compliance.

APPENDICES

Appendix I:

Obtaining Publisher Permission

When it is necessary that you request permission, you should communicate complete and accurate information to the copyright owner. The American Association of Publishers suggests that the following information be included in a permission request letter in order to expedite the process:

1. Title, author and/or edition of materials to be duplicated.
2. Exact material to be used, giving amount, page numbers, chapters, and if possible, a photocopy of the material.
3. Number of copies to be made.
4. Use to be made of duplicated materials.
5. Form of distribution (classroom, newsletter, etc.)
6. Whether or not material is to be sold.
7. Type of reprint (ditto, photography, offset, typeset, video, audio).

The request should be sent, together with a self-addressed return envelope to the permissions department of the publisher in question. (Check with the library if you having difficulty locating an address.) Because this is a time consuming process, you are advised to allow enough lead time to obtain permission before the materials are needed. A sample "Permission Letter" is attached.

Appendix II:

Definitions Taken From The American Association Of Publisher Guidelines On Photocopying. Brevity

1. Poetry:

- (a) A complete poem if less than 250 words and if printed on not more than two pages, or
- (b) from a longer poem, an excerpt of not more that 250 words.

2. Prose:

- (a) Either a complete article, story or essay of less than 2,500 words, or
- (b) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words.

(Each of the numerical limits stated in 1 and 2 above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.)

3. Illustration:

One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.

4. "Special" works:

Certain works in poetry, prose or in "poetic prose" which often combines language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety.

Paragraph "ii" above notwithstanding such "special works" may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text thereof, may be reproduced.

5. Spontaneity:

- (a) The copying is at the instance and inspiration of the individual teacher, and
- (b) The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

6. Cumulative Effect

- (a) The copying of the materials is for only one course in the college in which the copies are made.
- (b) Not more than one short poem, article story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.
- (c) There shall not be more than nine instances of such multiple copying for one course during one class term.

(The limitations stated in "a" and "b" above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.)

Appendix: III

A Statement Regarding Fair Use:

Cabrillo College is cognizant of the fact that the copyright law which took effect in January, 1978, allows educators "fair use" based on the following four factors (Section 107):

1. Purpose and character of the use (The use must be for an educational purpose)
2. Nature of the copyrighted work (Textbooks have a bigger market than a videotape)
3. Amount of work used (Usually there is a 10 percent limit)
4. Effect of the use upon the potential market for or value of the copyrighted work. (Sales)

Assuming the use is for classroom instruction, the next criterion applied is "nature of the work." These policies and regulations explain what is permissible for each of the following formats: print, sheet and recorded music, audiovisual works, computer software, and video duplication off-air and from videocassette recorder to videocassette recorder. Generally, copying should not exceed 10 percent of the total work nor excerpt the creative "essence" of the work (e.g. The two-minute time-lapse metamorphosis scene from the "Monarch Butterfly" is the essence of this film.)

Occasionally there is a special note on some materials specifically prohibiting reproduction of any kind. Permission to use any part of such works must be secured in writing from the author or the producer.